

**WATER ALLOCATION PROGRAM DEVELOPMENT
WATER RIGHTS COMMITTEE**

MINUTES OF MEETING

Nov. 4, 2003

Members Present:

Dale Thompson
Caroline Karp
Greg Schultz
John Schock

Water Resources Board Staff:

Kathleen Crawley
Connie McGreavy
Juan Mariscal

Members Absent:

John Garry
Al Bettencourt
Kendra Beaver
Brian Bishop
Fred Crosby
Christopher D'Ovidio
Mary Ellen McCabe
Ken Payne
Paul Ryan
John Spirito
Bill Stamp

I. CALL TO ORDER:

Mr. Thompson called the meeting to order at 1:05 PM.

II. APPROVAL OF MINUTES

Approval of the minutes for the October meeting was deferred.

III. ITEMS FOR DISCUSSION

A. Review Revisions to Recommendations Document

Ms. McGreavy will try to complete the diagrams by the end of the month. Ms. Karp will provide the flow diagram. Ms. McGreavy suggested a number of revisions to the report and other members requested that footnotes be added. Only the first three pages of the report were reviewed. Mr. Shock suggested that the order of the water rights approaches be changed from least restrictive to most restrictive. Board staff will check the Board's role in terms of authority, if any, over supplier agreements. Mr. Schultz asked if deeded flow rights are exempt. In the Background section, discussion ensued regarding the term, "reasonable use". In the General Recommendations section, Ms. McGreavy clarified that the recommendation is actually to revise the statute (§46-15). Discussion ensued regarding the term, "owned" versus water resources held in trust. Ms. McGreavy suggested checking the appropriate Regulated Riparian Model Water Code section (1R-1-01). Board staff will check with the RI Attorney General's office regarding acceptance of the word, "owned". Ms. Karp mentioned that she did not want the state to be able to sell water; therefore, it cannot be an owner of the water. Discussion moved to the agriculture exemption of the statute (§46-15). Ms. Karp believed that water management plans drawn up by farmers creates an entitlement to large volumes of water. She did not

want this to be implied. Mr. Thompson explained that the charge of the committee was to interpret the statute, and that there was not time to address revising that section of law in the report. A question arose as to whether the Drought Management Plan needed to be amended. Discussion turned to the Priorities section; Ms. Karp asked that federal law be acknowledged in terms of environmental protections and conservation. Ms. McGreavy requested that committee member names not appear in the body of the report; they will be footnoted.

B. Discuss Alternative Structures

Mr. Thompson reviewed the recommended options for a Water Rights structure. He explained that the voluntary approach (Drought Scenario) assumes that water volumes will be adhered to in an emergency. This is a weakness. Draconian measures may be needed if there is not compliance. The voluntary approach appears to be less intrusive, but in the end, it could be more intrusive. Under the Market Approach, there must be baseline data. In order to determine the baseline, a regulatory approach is needed. Mr. Thompson felt it would be premature to undertake the Market Approach.

Mr. Thompson explained that under the drought scenario, regulations still need to be in place to administer the rights structure. A combination of approaches is needed (Drought/Regulatory Approach) in order to quantify water volumes. Mr. Thompson said that more thought was needed, but that the idea is to put regulations in place to allow flexibility at start up. Once water volumes are quantified, then they can be managed. During shortages, voluntary restrictions are implemented; during emergencies, mandatory restrictions are implemented.

Mr. Thompson completed summarizing the other options and then “polled” individuals regarding their Water Rights Structure preference. Ms. Karp favored the Regulatory Approach and believed that a voluntary system would not work. She did not feel a Market Approach would work either, because water cannot be traded if it is not owned, or if there is no entitlement. Before water can be traded, there must be a legally enforceable water right. Mr. Thompson stated that a “license” to use water can be transferred, but the amount has to be defined. Ms. Karp felt a permitting regime was necessary, especially for major users. She was not necessarily in favor of the Water Resources Board being the permitting entity, however. Discussion turned to the alternative of taking advantage of existing institutional capacity and not necessarily creating new regulatory authority. The Narragansett Bay Commission was cited as an example of an entity that administers wastewater permits for a defined district.

Mr. Shock was in favor of a Registration System to quantify use; he felt that registration was “incremental to determine permitting”. Mr. Schultz “echoed Caroline’s comments” and commended Mr. Thompson for an excellent job describing the various scenarios. He indicated that the RI Dept. of Environmental Management would comment officially later. Ms. McGreavy favors a combination of a Registration and Permit System that would be in place all year, not just in drought.

She stated that the Regulatory Approach, as described in the report, is illustrative of the existing approach (voluntary/nonregulatory). She did not believe the status quo was an appropriate alternative. Under the Regulatory Approach, there is no clear mechanism to gather information. It resembles the Drought Scenario, with the exception that it would be in place all year long. The need to gather information (to set priorities for water restrictions) would seem to result in a registration system. Ms. McGreavy did not favor the Drought Scenario because drought is a long-range event, requiring yearlong data collection, analysis, and education. Water effects are delayed and recovery takes time. In addition, she did not wish to target certain water users that need large amounts of water at times of peak demand. There could be a negative perception and potentially unfair focus on these users. Ms. McGreavy stated that Rhode Island was not ready for a Market Approach; information systems under design were not planned with this purpose in mind. She did not like the idea of pricing surface or groundwater as a commodity. Ms. McGreavy felt that any Permit System intrinsically has a Registration component. Further, a Permit System would ultimately be needed to manage large volumes of water, whether it is the user of water or the movement of water [between basins]. She mentioned the Out-of-Basin Transfer Committee's recommendations for a water withdrawal permit system and a pre-application review process to determine whether projects were "significant" and thus in need of a permit.

Mr. Meyer stated that today, water management can be like a chess game, where people make moves to either work within the system or avoid it. He used an example for the Kingston Water District that involved siting a new well in a wetland; there was no explicit regulation of the amount of water to be withdrawn. Mr. Meyer felt more certainty in the process was needed, and that reviewers to evaluate development proposals at the local level and at the Board level were needed. He stated that suppliers were used to regulation already and that many users already have to comply with RIPDES (wastewater discharge) permits, including justifying the need to modify the permit. Mr. Meyer felt that anyone who goes forward at this point must demonstrate the need for water, and to do that, record keeping is necessary to document water use. In favoring the Permit System approach, Mr. Meyer added that conditional permits could be a way to start, making the permits mandatory over a 3-5 year period. He stated that the problem was that the Water Supply System Management Plans are reviewed at the state level as planning documents, but not water resources management documents. Again, using East Farm as an example, he stated that while planning reduced the demand for water, it did not positively affect management of the overall resource. The WSSMP program focus needs to change. While there is information included in these plans, data was not the main focus. However, the data could be pulled out and put into a registration system (database), then used for decision-making.

Mr. Mariscal concurred with Ms. Karp. He does not believe that voluntary systems work. He stated that a Registration System is inherent in a Permit System, the latter of which is ultimately needed to get comparative data. He believed implementation by wastewater management districts was a possibility, but with any local application,

there would have to be consistency between administrative agencies with one central oversight agency. Ms. Crawley noted that self-supplied users are a gap in terms of not necessarily being in a sewer district. Mr. Mariscal stated that a new system might be needed for self-supplied users, and that a threshold for large users would be appropriate. Mr. Schultz asked how many large users there are in Rhode Island. Ms. McGreavy replied that there were not many. Mr. Schock suggested that outdoor residential water use is a big problem. Ms. McGreavy replied that seasonal, domestic water use could be addressed outside of a registration or permit system. Ms. Crawley added that there are geographical considerations and groundwater considerations. Ms. McGreavy acknowledged the alternative model of using existing entities to permit, but did not feel these various local and regional entities were necessarily qualified to do the assessment that would be needed to issue a permit. Ms. Crawley indicated that she was not prepared to choose an alternative, but liked the Drought Scenario.

Mr. Schultz asked if the major public water suppliers could register users and let the Board just register the major suppliers. The suppliers can use many tools to manage water (price and nonprice programs). Mr. Mariscal advised that initial implementation would require a change in culture. Mr. Shock countered that people want green lawns—another social issue. Ms. McGreavy shared Ms. Jacques perspective on a rights structure. Based on the negative reaction of the farmers on the committee to any form of regulation, Ms. Jacques thought the Drought Scenario was feasible now, as long as drought was well defined. Ms. Jacques believed that a voluntary permit approach with incentives was preferable, if there was enough data. Eventually, she would consider a Market System. Mr. Thompson stated that both Mr. Bettencourt and Mr. Stamp weighed in for the Voluntary Approach and Mr. Bishop favored the Market Approach.

Mr. Thompson confirmed his support of a combination Drought/Regulatory System. He restated the need to develop a permit system, just to go forward under a Drought Scenario. He believed it might be more politically palatable to institute a program limited to drought periods. Out-of-basin considerations could be added in gradually. With a voluntary approach, a “big stick” is needed. Alternatively, the state could take the “big hit” early with a mandatory program, and invest in education. Ms. McGreavy responded that various entities are already required to educate and that the existing scenario is voluntary. There is widespread disagreement regarding whether the status quo is sufficient versus a registration or permit system.

IV. ITEMS FOR ACTION

Non-binding Vote on Alternative Structures (2 abstentions)

Rights Structure Alternative	# of Votes in Favor
1A. Drought Scenario – Regulatory Approach	2
1B. Drought Scenario – Market Approach	1
1C. Drought Scenario – Voluntary Approach	2
2. Full Permit System	2
3. Registration System	1

Mr. Thompson noted a clear “non-consensus”!

V. OTHER BUSINESS

Mr. Schultz asked one last question regarding deeded flow rights: could the state regulate them? Mr. Thompson responded that if the legislature created the right, it could pull it back. Compensation might need to be provided. Mr. Schultz felt strongly that state agency directors needed to be briefed on WAPAC findings. Ms. McGreavy agreed and stated that the Education Committee

VI. AJOURNMENT

The meeting was adjourned at 3:35 PM. There will not be a meeting in December.

Respectfully submitted,

Connie McGreavy
RI Water Resources Board

Date